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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/530,060      | 07/06/2000  | KAZUAKI OHKUBO       | YAO-4321US          | 7496             |

7590 12/29/2003

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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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DATE MAILED:

This is a communication from the examiner in charge of your application.  
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OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on September 17, 2003
- ☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1, 32, 33, 35-37, 39, 42, 46, 50, 56-58 is/are pending in the application.
- ☐ Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 32, 33, 35-37, 39, 42, 46, 50, 56-58 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claims \_\_\_\_\_ is/are objected to.
- \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application \_\_\_\_\_

BEST AVAILABLE COPY

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 32, 33, 35-37, 39, 57, and 58 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Diamantopolous et al.

See column 6, line 1 to column 10, line 62, especially column 8 lines 54-59.

Claims 1, 32, 33, 36, 37, 39, 42, 46, 50, 56, and 58 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hughes.

See column 3 line 5- column 4, line 45.

Applicant's arguments have been considered, but are not convincing for several reasons. Regarding the Diamantopolous et al references, the two means are not only provided concurrently, but operated concurrently as well, since the various wavelengths must act simultaneously to provide the desired effect of Diamantopolous et al (see column 7, lines 58-65, for example).

Regarding Hughes, the examiner is at a loss to determine the basis upon which applicant makes the statement that Hughes does not provide the means concurrently when all the illumination from the Hughes device can be provided simultaneously by a single bulb as in the device of applicant. Thus if applicant continues in this line of argument the basis upon which this assertion (i.e. lack of concurrent provision of the two means) rests must be clearly and explicitly set forth if the examiner is to give a meaningful rebuttal thereof.

Regarding the issue of illumination, the examiner notes the following facts. No specific definition of the term "illumination" has been found by the examiner nor pointed to by applicant

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in the instant specification. The American Heritage Dictionary defines illumination as “a light source”. Hughes refers to illumination specifically (see column 4, lines 4-14). And U.S. Patent 5,707,403 to Grove et al discusses treatment by illumination in conjunction with the probe contacting the subject (see column 4, line 18 to column 5, line 38). Thus clearly Hughes teaches illumination per se. The broadest reasonable interpretation of the term “illumination” encompass “a light source” and thus both Diamantopolous et al and Hughes provide illumination, within this interpretation. And the term “illumination” as understood in the art at the time applicants invention was made is known to include light provided by probes which are in contact with the subject and thus covers devices such as those of Diamantopolous et al and Hughes. Thus applicant’s arguments regarding illumination are not convincing.

Applicant's arguments filed September 12, 2003 have been fully considered but they are not persuasive. The arguments are not convincing for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

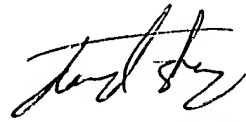
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

Shay/DI

November 28, 2003



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330